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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 479

HILTON HOTELS (U.K.) LIMITED,
Petitioner.

—against—

JACK FRUMMER,
Respondent,

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

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The Petitioner, Hilton Hotels (U.K.) Limited, prays that a Writ of Certiorari issue to review (1) an order of the Court of Appeals of the State of New York, dated May 18, 1967, as amended, which affirmed an order of the Supreme Court of the State of New York, Appellate Division, Second Department, made on the 28th day of March, 1967; and (2) an order of the Court of Appeals made on the 7th day of July, 1967, to the extent that it denied a rehearing of the aforesaid appeal.

The Opinions Below

The opinion of the Court of Appeals of the State of New York has not yet been reported. The opinion and order and remittitur as amended are printed in the Appendix at pages 1a to 19a, *infra*.

The decision of the Court of Appeals of the State of New York denying a rehearing and directing amendment of the remittitur are printed in the Appendix at pages 20a to 21a, *infra*.

The opinion of the Supreme Court of the State of New York, County of Kings, has not been officially or unofficially reported, and its opinion is printed in the Appendix hereto at pages 27a to 28a, *infra*.

The memorandum decision of the Supreme Court, Appellate Division, Second Department, affirming the decision of the Supreme Court of the State of New York, County of Kings, has not been officially reported, but is reported in 269 N. Y. S. 2d 688, and its memorandum decision and order are printed in the Appendix hereto at pages 22a to 24a, *infra*.

Jurisdiction

The order of the Court of Appeals of the State of New York was entered on May 18, 1967 (Appendix, pages 17a-19a, *infra*) and the order of the Court of Appeals of the State of New York denying a rehearing and directing amendment of the remittitur was entered on July 7, 1967 (Appendix, pages 20a-21a, *infra*). The order of the Supreme Court, Appellate Division, Second Department was entered on March 28, 1966 (Appendix, pages 23a-24a, *infra*). The order of the Supreme Court of the State of New York, County of Kings was entered on July 26, 1965 (Appendix, pages 30a-31a, *infra*). The jurisdiction of this Court is invoked under 28 U. S. C. Section 1257.

The Question Presented

Does the order of the Court of Appeals holding that the New York Courts have *in personam* jurisdiction in a tort action for an alleged injury occurring in London, England against Hilton Hotels (U.K.) Ltd., an English corporation, whose sole business is the operation of a hotel in London, England, violate the due process clause of the 14th Amendment to the Constitution of the United States?

Statement

This is a personal injury action brought by Respondent to recover damages for injuries allegedly sustained by Respondent in a bathtub in the London Hilton Hotel, in London, England.

The London Hilton Hotel is operated by the Petitioner Hilton Hotels (U.K.) Limited, an English corporation which leases the Hotel from another, non-affiliated, English corporation.

At the time in question, the stock of Hilton Hotels (U.K.) Limited was owned by Hilton Hotels International, Inc., whose stock in turn was owned by Hilton Hotels Corporation (Record pages 69-70). Both of those corporations were also named and served as co-defendants in the action.

Respondent sought to commence the action against Petitioner, by serving process on its Secretary in London, England, on or about May 20, 1965.

Promptly after such purported service, Petitioner moved for an order pursuant to Civil Practice Law and Rules of the State of New York, Section 3211(a) 8, dismissing the complaint as to it, upon the ground that the Supreme Court of the State of New York did not have jurisdiction over the person of said Petitioner (Record, page 7-8). The lower Court denied the motion (Appendix, pages 30a-31a, *infra*).

The Appellate Division of the Supreme Court of the State of New York, affirmed the decision below without opinion (Record, page 89; 269 N. Y. S. 2d 688) but, granted leave to Petitioner to appeal to the Court of Appeals of the State of New York (Appendix, pages 25a-26a, *infra*).

The Court of Appeals of the State of New York affirmed the decision below by a four-to-three vote. The majority and dissenting opinions are printed in the Appendix hereto at pages 1a to 16a, *infra*.

In reaching its decision the Court of Appeals adverted to the Federal Constitutional question raised by Petitioners, that the contacts of Hilton Hotels (U.K.) Limited with State of New York were insufficient under the due process clause of the Fourteenth Amendment to the U. S. Constitution to justify the exercise of jurisdiction.

Further, any ambiguity in this regard was completely dispelled by the action of the Court of Appeals on July 7, 1967, in response to Petitioners' motion, directing the amendment of its remittitur by adding thereto the following (Appendix, pages 20a-21a, *infra*).

> "Upon the appeal herein there was presented and necessarily passed upon a question under the Constitution of the United States, viz.: Defendant British corporation contended that it was deprived of due process in violation of its rights under the Fourteenth Amendment of the Constitution of the United States. The Court of Appeals held that there was no violation of the defendant's constitional rights."

The facts are undisputed. Petitioner operates the London Hilton Hotel, in London, England. Its activities are directed solely and exclusively, and without any exception by the management of the London Hilton Hotel (Record, page 70). It has no employees in the State of New York; it has no office in the State of New York; it has no funds in the State of New York; it leases no property in the State of

New York; it never applied for authority to do business in the State of New York (Record, page 71). At the time of the alleged tort, Petitioner was a wholly-owned subsidiary of Hilton Hotels International, Inc., a Delaware corporation, whose principal place of business was in the State of New York which in turn was a wholly-owned subsidiary of Hilton Hotels Corporation, a Delaware corporation whose principal office and place of business was in Chicago, Illinois. A subsidiary of Hilton Hotels Corporation operated the Hilton Reservation Service which provided reservation services for the hotels operated by Hilton Hotels Corporation and its subsidiary companies and the hotel, operated by Hilton Hotels International, Inc. and its subsidiaries including Petitioner as well as for some 50 hotels operated by non-affiliated persons. Hilton Reservation Service maintained offices in many cities throughout the United States and overseas, including an office in New York. It had its own bank accounts, its own telephone listings and advertised its services, which consisted of informing persons desiring reservations at any hotels served by it whether or not rooms were available in such hotels at the requested times. Its confirmation of the availability of space in any hotel was based upon information and instructions provided for it by the hotel. Where on the basis of such information and instructions space was available, it confirmed that fact to the potential customer. The services performed for the hotels owned by Hilton affiliates were the same as those performed for non-affiliated hotels (Record, pages 7, 70-72).

Neither the complaint in the present case nor the affidavit of counsel in opposition to the motion to dismiss the complaint alleges that the plaintiff-respondent had any dealings with the Hilton Reservation Service in New York or elsewhere but merely alleges and asserts that the plaintiff became a guest and registered at the hotel known as the London Hilton Hotel in London, England.

Reasons for Granting the Writ

The 4-3 decision by the Court of Appeals of the State of New York in the present case would, if it were permitted to stand, represent an extremely important and far-reaching extension of the jurisdiction of state courts over foreign corporations. For the first time, to counsel's knowledge, a state court has asserted jurisdiction over an action for an alleged tort committed outside of the state and not arising from a transaction in the state against a foreign corporation whose only contact with the state is that a third party has been granted limited authority to enter into arrangements for the provision of services by the foreign corporation outside of the state. As indicated above, the respondent did not even allege that he entered into any arrangement with or through that third party and thus on the basis of the record it can only be concluded that his entire relationship with the foreign corporation took place in its foreign place of business.

It is a fact that the third party here, Hilton Reservation Service, was at the time an affiliate, three steps removed of petitioner Hilton Hotels (U.K.) Ltd., but it is equally the fact, that the authority and functions of Hilton Reservation Service vis-a-vis petitioner, were exactly the same as its authority and functions with respect to the fifty completely non-affiliated hotel operations which it serviced, i.e., the confirming of availabilities of accommodations on the basis of information supplied and instructions given by the client hotels. The decision, therefore, could bring all such non-affiliated hotels and, indeed, any hotel using any reservation service, under the jurisdiction of the courts of the state, even though such hotel had no other contact with the state and the acts giving rise to the action and the reservation transaction itself were wholly outside the state.

Nor, of course, would the decision be limited in its consequences to hotels or other enterprises in the travel field, numerous and important as these are. It would extend to

the entire range of manufacturers or suppliers of products or services which have continuing representative arrangements. For a single illustrative example, we may take the case of an English motorcar manufacturer. Such a manufacturer would typically have arrangements for offering its automobiles by dealers throughout the United States. Such dealers will normally be assured of the availability of a minimum number of automobiles so that they are in a position to confirm such availabilities to prospective customers, whether for delivery in the jurisdiction in question, or for direct delivery overseas. They normally advertise the automobiles for which they have such representation. It is difficult to see how, under the majority decision of the Court of Appeals, in this case, jurisdiction could be denied to any court in any state in which there is such a dealer, even over a cause of action for injuries sustained in England as a result of a defective part in an automobile bought in England through an English dealer. Indeed, such a result would appear to follow *a fortiorari* since in the present case there could not possibly have been any delivery of petitioner's hotel services in the state to anyone even by a third party.

It is unnecessary to multiply such examples since their multiplicity is manifest. It is equally manifest that if the decision were permitted to stand, it would be an understatement to say that it "heralds the eventual demise of all restrictions on the personal jurisdiction of the courts" contrary to the explicit injunction of this Court in *Hanson* v. *Denckla,* 357 U. S. 235 (1957) at page 251. In that case, the Court went on to say:

> "Those restrictions are more than a guarantee of immunity from inconvenient or distant litigation. They are a consequence of territorial limitations on the power of the respective States."

The decision of the Court of Appeals erred in several vital respects. As Judge Breitel points out in his dissent,

the majority opinion, while purporting to recognize that the affiliation of petitioner with the Hilton Reservation Service is legally irrelevant, in view of the unchallenged complete separation of the internal affairs and management of these companies, yet appears to base its decision on what it terms "a valid inference as to the scope of the agency", based on such affiliation, without ever disclosing what that "valid inference" is or how it bears upon the issue. Its only statement as to the scope of the agency is made earlier in its opinion when attempting to distinguish its prior decision in *Miller* v. *Surf Properties*, 4 N. Y. 2d 475, states, "the Hilton Reservation Service both accepts and confirms reservations at the London Hilton". As Judge Breitel points out, however (Appendix page 9a).

> ". . . there is no support in the record for the assertion that the Hilton Reservation Service 'both accepts and confirms room reservations at the London Hilton'. As established by the brochure of the Reservation Service and the affidavit of the Vice-President of Hilton International, the Reservation Service only 'confirm(s) availabilities' at various hotels (not merely Hilton Hotels) 'based on forecasts supplied by the hotels'. As a matter of fact, the affidavits supplied by plaintiff do not contradict this assertion but only equivocate that the reservations 'are taken and culminated right here in New York City', whatever the word 'culminated' may mean in this context. The local activities of the Reservation Service, then, are similar to those of the agency in the *Miller* case. There, the 'Resort Service' would be 'notified by (a) hotel as to the availability of space'. Unless the hotel had informed the Service to the contrary, it would, in turn, inform inquiring customers that 'reservations are available' (4 N. Y. 2d at 479, *supra*)."

Even more significant and vital, however, is the majority opinion's failure to recognize the basic principle enunciated by this Court in *International Shoe Co.* v. *Washington,* 326 U. S. 310 (1945) despite its purported reliance on that decision. In that case, this Court, after discussing the prior cases, stated the controlling conditions as follows (See page 319):

> "It is evident that the criteria by which we mark the boundary line between those activities which justify the subjection of a corporation to suit, and those which do not, cannot be simply mechanical or quantitative. The test is not merely, as has sometimes been suggested, whether the activity, which the corporation has seen fit to procure through its agents in another state, is a little more or a little less. *St. Louis S. W. R. Co.* v. *Alexander, supra,* 228; *International Harvester Co.* v. *Kentucky, supra,* 587. Whether due process is satisfied must depend rather upon the quality and nature of the activity in relation to the fair and orderly administration of the laws which it was the purpose of the due process clause to insure. That clause does not contemplate that a state may make binding a judgment *in personam* against an individual or corporate defendant with which the state has no contacts, ties, or relations. Cf. *Pennoyer* v. *Neff, supra; Minnesota Commercial Assn.* v. *Benn,* 261 U. S. 140.
>
> "But to the extent that a corporation exercises the privilege of conducting activities within a state, it enjoys the benefits and protection of the laws of that state. The exercise of that privilege may give rise to obligations, and, *so far as those obligations arise out of or are connected with the activities within the state,* a procedure which requires the corporation to respond to a suit brought to enforce them can, in most instances, hardly be said to be undue. Compare *International Harvester Co.* v. *Kentucky, supra,* with

Green v. *Chicago, B. & Q. R. Co., supra,* and *People's Tobacco Co.* v. *American Tobacco Co., supra.* Compare *Connecticut Mutual Co.* v. *Spratley, supra,* 619, 620 and *Commercial Mutual Co.* v. *Davis, supra,* with *Old Wayne Life Assn.* v. *McDonough, supra.* See 29 Columbia Law Review, 187-195" * (Emphasis supplied).

The principle set forth above was reaffirmed by this Court in *McGee* v. *International Life Ins. Co.,* 355 U. S. 220, and *Hanson* v. *Denckla, supra.* In the *McGee* case the California Court was held to have jurisdiction, the Court stating that, "It is sufficient for purposes of due process, that the suit was based on a contract which had substantial connection with that State" (Page 223). In the *Hanson* case, in which the Florida Court was held not to have jurisdiction, this Court stated, "The cause of action in this case is not one that arises out of an act done or transaction consummated in the forum State. In that respect, it differs from *McGee* v. *International Life Ins. Co.,* 355 U. S. 220, and the cases there cited."

In *Perkins* v. *Benquet Mining Co.,* 342 U. S. 437 (1951), decided exactly midway between *International Shoe Co.* v. *Washington, supra,* and *Hanson* v. *Denckla, supra,* the

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* See also *L. & N. R. Co.* v. *Chatters,* 279 U. S. 320 (1928), in which the Court in an opinion by Mr. Justice Stone stated at pages 324-325 as follows:

> "A foreign corporation is amenable to suit to enforce a personal liability if it is doing business within the jurisdiction in such manner and to such extent as to warrant the inference that it is present there. *Lafayette Insurance Co.* v. *French,* 18 How. 404; *Mutual Life Ins. Co.* v. *Spratley,* 172 U. S. 602; *St. Louis Southwestern Ry.* v. *Alexander,* 227 U. S. 218. Even when present and amenable to suit it may not, unless it has consented, *Pennsylvania Fire Ins. Co.* v. *Gold Issue Mining Co.,* 243 U. S. 93; *Smolik* v. *Phila. & Reading Coal Co.,* 222 Fed. 148, be sued on transitory causes of action arising elsewhere which are unconnected with any corporate action by it within the jurisdiction. *Old Wayne Mut. Life Ass'n* v. *McDonough,* 204 U. S. 8; *Simon* v. *Southern Ry. Co.,* 236 U. S. 115."

Court ignored the language quoted above from *International Shoe Co.* and purported to decide that under certain circumstances where the business done in the state is sufficiently substantial, a cause of action against a foreign corporation may be entertained where the cause of action did not arise from activities carried on in the state. Not only is this decision inconsistent with the later as well as the earlier opinions of the Court, but it is also thoroughly distinguishable on its facts. In the *Perkins* case, the defendant was a Philippine mining company owning and operating gold and silver mines in the Philippines. By reason of the war and Japanese occupation, the activities of the corporation in the Philippines were interrupted and the President of the corporation moved his office to Ohio where the corporation carried on "continuous and systematic corporate activities . . . consisting of Directors' meetings, business correspondence, banking, stock transfers, payment of salaries, purchasing of machinery, etc." The action was for enforcement of alleged corporate obligations to the plaintiff stockholder, being based on a claim for dividends and for damages arising from alleged failure of the corporation to issue stock certificates to which she was entitled.

Thus, despite some of the language contained in the opinion of Mr. Justice Burton, it would appear clear that the decision itself is thoroughly consistent with the principles enunciated by the Court in the preceding and subsequent opinions discussed above. The obligation sought to be enforced was a true corporate obligation as such and the *de facto* headquarters of the corporation were in the state in which the action was brought.

The present case presents the opposite extreme. The obligation which forms the basis of the action is the obligation to maintain a safe bathtub in a building in London. The defendant petitioner is a large, solvent and active corporation in England carrying on its only business, that of providing hotel facilities, in London. It carries on no activities, corporate or business, in the State of New

York. The problems of proof involved in the action relate to acts performed or unperformed by a whole range of personnel in London. As will be readily recognized, the types of tort actions arising out of the conduct of hotel operations such as slipping on staircases, falling into pools, having adverse reactions to food served, etc., all are peculiarly local phenomena, and the persons involved in the rendition of such services, or in performing normal maintenance activities and the like, are the persons whose testimony will most often be required. In addition, the ascertainment of the facts in such cases will in many instances be such as normally would cause a judge to direct a viewing of the actual scene of the alleged injury by the triers of the facts.

Finally, in the present case, not only the specific obligation involved in the action but also the relationship between petitioner and respondent was established in and only in London, and there was no relationship between respondent and petitioner or even any third person having any connection with petitioner in the State of New York. Under these circumstances, it is submitted that not only the controlling precedents but all general considerations of fairness, and principles of territorial jurisdiction make it imperative that this Court review the decision of the Court of Appeals in the instant case, particularly, as noted above, in view of the extremely far-reaching implications of the issues involved.

The decision below is not only, as has been demonstrated, contrary to the provisions of the Constitutional Law of this country, but it is equally contrary to the principles of private international law. Reference is made to the scholarly discussion of this aspect of the matter in the opinion of Judge Breitel (Appendix pages 6a-16a) on the basis of which he concludes that no country in the civilized world, even in the absence of a specific constitutional limitation such as is applicable to the individual states of the United States, asserts a jurisdiction as extensive as that sought to be

asserted here by the State of New York. As he concludes, the action of the State of New York, if permitted to stand, could easily lead to "reciprocal manipulation against American enterprises operating through subsidiaries or affiliates in other countries" (Appendix page 15a) and as stated earlier in the opinion, "These considerations are particularly important for a country engaged in world-wide trade and investment, often in the less developed countries of the world, because of the encouragement or discouragement to risk capital and the exposure to reciprocal treatment of jurisdictional bases in foreign countries" (Appendix page 7a).

CONCLUSION

For the foregoing reasons this petition for a writ of certiorari should be granted.

Respectfully submitted,

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STATE OF NEW YORK

COURT OF APPEALS

2. No. 529 66

JACK FRUMMER,

Respondent,

VS

HILTON HOTELS INTERNATIONAL, INC., & ors.,

Appellants.

FULD, *Ch. J.*:

This appeal calls upon us to determine whether jurisdiction was validly acquired over one of the defendants, Hilton Hotels (U.K.) Ltd., a British corporation (hereafter referred to as Hilton [U.K.]).

The plaintiff alleges that in 1963 when he was on a visit to England he fell and was injured in his room at the London Hilton Hotel while attempting to take a shower in an "ovular", modernistic type bathtub. He seeks $150,000 in damages not only from the defendant Hilton (U.K.) but also from the defendants Hilton Hotels Corporation and Hilton Hotels International, both of which are Delaware corporations doing business in New York. The defendant Hilton (U.K.), which is the lessee and operator of the London Hilton Hotel, has moved (pursuant to CPLR 3211[a][8]), for an order dismissing the complaint against it on the ground that the court lacks jurisdiction of the defendant's person.

Both parties argue that "the applicable statute" is CPLR 302(a)(1) which authorizes our courts to exercise

personal jurisdiction over a foreign corporation if it "transacts any business within the state" and the cause of action asserted against it is one "arising from" the transaction of such business. (See, e.g., *Longines-Wittnauer* v. *Barnes & Reinecke*, 15 N. Y. 2d 443; *Lewin* v. *Bock Laundry Machine Co.*, 16 N. Y. 2d 1070; *Gutfreund* v. *Russ*, 16 N. Y. 2d 637.) However, the plaintiff does not allege that he had any dealings at all with the British corporate defendant or its agents in this State. Therefore, it may not be said that his cause of action *arose* from the British corporation's transaction of any business here, and he is not entitled to avail himself of CPLR 302(a)(1) in order to bring the defendant within the jurisdiction of our courts. (See *Kramer* v. *Vogl*, 17 N. Y. 2d 27a, 31-32.)

Be that as it may, jurisdiction was, in our view, properly acquired over Hilton (U.K.) because the record discloses that it was "doing business" here in the *traditional* sense. (CPLR 301; see *Public Admr. of New York* v. *Royal Bank of Canada*, 19 N. Y. 2d 127; *Bryant* v. *Finnish Nat. Airline*, 15 N. Y. 2d 426; *Taca Int. Airlines* v. *Rolls-Royce of Eng.*, 15 N. Y. 2d 97; *Tauza* v. *Susquehanna Coal Co.*, 220 N. Y. 259; *International Shoe Co.* v. *Washington*, 326 U. S. 310.)[1] As we have frequently observed, a foreign corporation is amenable to suit in our courts if it is "engaged in such a continuous and systematic course of 'doing business' here as to warrant a finding of its 'presence' in this jurisdiction." (*Simonson* v. *International Bank*, 14 N. Y. 2d 281, 285; see, e.g., *Bryant* v. *Finnish Nat. Airline*, 15 N. Y.

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[1] This ground for decision is properly brought before us by the certified question since the courts below, in sustaining jurisdiction over the defendant, specifically relied on *both* our "long-arm" statute (CPLR 302[a][1])—which, as indicated, is limited to a cause of action arising out of the transaction of business in New York—and the *Taca Int. Airlines* case (15 N. Y. 2d 97, *supra*) which concerned "doing business" here in the traditional sense. (Cf. *Singer* v. *Walker*, 15 N. Y. 2d 443, 466-467.)

2d 426, 430, *supra; Berner* v. *United Airlines,* 3 N. Y. 2d 1003; *Elish* v. *St. Louis Southwestern Ry. Co.,* 305 N. Y. 267; *Tauza* v. *Susquehanna Coal Co.,* 220 N. Y. 259, *supra.*) Although "mere solicitation" of business for an out-of-state concern is not enough to constitute doing business (*Miller* v. *Surf Properties,* 4 N. Y. 2d 475, 480; see *International Shoe Co.* v. *Washington,* 326 U. S. 310, 315, *supra*), due process requirements are satisfied if the defendant foreign corporation has "certain minimum contacts with [the State] such that the maintenance of suit does not offend 'traditional notions of fair play and substantial justice'." (*International Shoe Co.* v. *Washington,* 326 U. S. 310, 316, *supra;* see *Simonson* v. *International Bank,* 14 N. Y. 2d 281, 286, *supra.*)

In *Bryant* v. *Finnish Nat. Airline* (15 N. Y. 2d 426, 432, *supra*), the court declared that the "test for 'doing business' * * * should be a simple pragmatic one" and, applying that test, went on to hold that the requisite minimum contacts with New York were made out when it appears that the defendant foreign corporation, an airline, "has a lease on a New York office, * * * employs several people and * * * has a bank account here, does public relations and publicity work for defendant here including maintaining contacts with other airlines and travel agencies * * * transmits requests for space to defendant in Europe and helps to generate business."

In the case before us, these same services are provided for the defendant Hilton (U.K.) by the Hilton Reservation Service which has a New York office, as well as a New York bank account and telephone number. The Service advertises that it was "established to provide the closest possible liaison with Travel Agents across the country", that lodging "rates for certified wholesalers and/or tour operators [could] be obtained [from the Service] on request" and that it could "confirm availabilities immediately * * * and without charge"

at any Hilton hotel including the London Hilton. Thus, it does "public relations and publicity work" for the defendant Hilton (U.K.), including "maintaining contacts with * * * travel agents" and tour directors; and it most certainly "helps to generate business" here for the London Hilton—which, indeed, was the very purpose for which it was established. Moreover, unlike the *Bryant* case (15 N. Y. 2d 426, 432, *supra*)—where the defendant's New York office did not make reservations or sell tickets—the Hilton Reservation Service both accepts and confirms room reservations at the London Hilton. In short—and this is the significant and pivotal factor—the Service does all the business which Hilton (U.K.) could do were it here by its own officials.

The defendant's reliance on *Miller* v. *Surf Properties* (4 N. Y. 2d 475, *supra*) is misplaced. In that case, we held that the activities of a "travel agency" were not sufficient to give our courts *in personam* jurisdiction over a Florida hotel when the agency's services "amount to little more than rendering telephone service and mailing brochures" for the hotel and 30 other independent and unassociated Florida establishments (4 N. Y. 2d, at p. 481). Indeed, in *Bryant* (15 N. Y. 2d 426, 431, *supra*), we found it significant that in the *Miller* case the New York activities were carried on "not by an employee of the defendant [Florida hotel] but an independent travel agency representing defendant in New York City." It is true that, in the case before us, the Hilton Reservation Service is not the "employee" of the Hilton (U.K.) but the Service and that defendant are owned in common by the other defendants and the Service is concededly run on a "non-profit" basis for the benefit of the London Hilton and other Hilton hotels.

It is to be borne in mind, contrary to certain intimations in the dissenting opinion that this appeal deals with the jurisdiction of our courts over a foreign corporation rather than the liability of a parent company for the acts of a

wholly owned subsidiary. (Cf. *Walkovsky* v. *Carlton*, 18 N. Y. 2d 414.) The "presence" of Hilton (U.K.) in New York, for purposes of jurisdiction, is established by the activities conducted here on its behalf by its agent, the Hilton Reservation Service, and the fact that the two are commonly owned is significant only because it gives rise to a valid inference as to the scope of the agency in the absence of an express agency agreement such as the one which existed in the *Berner* case (3 N. Y. 2d 1003, *supra*).

We are not unmindful that litigation in a foreign jurisdiction is a burdensome inconvenience for any company. However, it is part of the price which may properly be demanded of those who extensively engage in international trade. When their activities abroad, either directly or through an agent, become as widespread and energetic as the activities in New York conducted by Hilton (U.K.), they receive considerable benefits from such foreign business and may not be heard to complain about the burdens.

Since, then, Hilton (U.K.) was "doing business" in New York in the traditional sense and was validly served with process in London, as provided by statute (CPLR 313), our courts acquired "personal jurisdiction over the corporation for any cause of action asserted against it, no matter where the events occurred which give rise to the cause of action." (*Public Admr. of New York* v. *Royal Bank of Canada*, 19 N. Y. 2d 127, 130, *supra*.)

The order of the Appellate Division should be affirmed, with costs, and the certified question answered in the affirmative.

BREITEL, *J.* (dissenting):

The Court is in agreement that personal jurisdiction cannot be extended over the defendant, Hilton Hotels (U.K.) Limited, a British corporation, under the provisions of New York's long-arm statute (CPLR 302[a][1]). Disagreement arises only over whether personal jurisdiction may be extended under "traditional" concepts of doing business in the State or by reason of the foreign corporation's "presence" in the State (CPLR 301 *). The difference in application of the two statutes determines whether judicial jurisdiction may be extended over a non-domiciliary to causes of action which arose outside the State as distinguished from those which arose in the State. The present case involves a tort which occurred outside the State.

The traditional concept, of course, had its finest articulation in Judge Cardozo's opinion in *Tauza* v. *Susquehanna Coal Co.* (220 N. Y. 259). Since then rather settled lines of distinction or tests have demarked reasonably well the basis upon which such jurisdiction rests (e.g., *Miller* v. *Surf Properties,* 4 N. Y. 2d 475; *Elish* v. *St Louis Southwestern Ry.,* 305 N. Y. 267, 270-271; *Sterling Novelty Corp.* v. *Frank & Hirsch Distr. Co.,* 299 N. Y. 208, 210-212; *Yeckes-Eichenbaum, Inc.,* v. *McCarthy,* 290 N. Y. 437, 444; *Gaboury* v. *Central Vermont Ry.,* 250 N. Y. 233, 238; *Holzer* v. *Dodge Bros.,* 233 N. Y. 216, 221; see *Simonson* v. *International Bank,* 14 N. Y. 2d 281, 285; cf. *Hanson* v. *Denckla,* 357 U. S. 235, 251; *International Shoe Co.* v. *Washington,* 326 U. S. 310, 320). But, in recent years, undoubtedly under the liberating and liberal philosophy of long-arm jurisdiction, the traditional basis for personal jurisdiction over foreign corporations allegedly doing

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* "A court may exercise such jurisdiction over persons, property, or status as might have been exercised heretofore."

business here has been stretched to cover a variety of unusual situations (*Public Adm. of New York* v. *Royal Bank of Canada*, 19 N. Y. 2d 127; *Bryant* v. *Finnish Nat. Airline*, 15 N. Y. 2d 426; *Taca Int. Airlines* v. *Rolls-Royce of Eng.*, 15 N. Y. 2d 97).

The occasion for disagreement in this case is the extension of personal jurisdiction over a foreign corporation simply because of its relationship with subsidiary or affiliated corporations of a parent corporation. Moreover, such jurisdiction is extended in the absence of fraud, misrepresentation, or intermingling of activities of separate corporations. Before considering the particular facts of this case it should be observed that important policy and commercial considerations are involved in preventing or allowing business enterprise to limit liability, suability, and exposure to governmental regulation, by the creation of truly separate corporate entities, with or without separate ownership structures, but especially where the ownership is not identical. These considerations are particularly important for a country engaged in world-wide trade and investment, often in the less developed countries of the world, because of the encouragement or discouragement to risk capital and the exposure to reciprocal treatment of jurisdictional bases in foreign countries.

The personal injury negligence tort of which plaintiff complains occurred in an English hotel in London resulting from a fall in the bathtub. Plaintiff is a New York resident who was then on tour in England. The hotel is operated by a British corporation, Hilton Hotels (U. K. Limited, all but one of the shares of which are owned by Hilton Hotels International, Inc. International is a Delaware corporation owning directly or through subsidiaries a large number of hotels in countries outside the United States mainland. The stock of International is owned in part by Hilton Hotels Corporation, the American parent

of the widespread Hilton Hotel enterprises. Both Hilton Hotels and International, although affiliated, have somewhat different stock ownership, with shares in each listed and available on public stock exchanges. Associated with this complex is an affiliate, Hilton Credit Corp., providing credit card financing and distribution and a hotel reservation service, in New York and elsewhere. This latter corporation is jointly owned by Hilton Hotels Corporation and International.

There is no claim by plaintiff that the Hilton complex or any of its components is used to defraud, deceive, or mislead those who deal with it, or that there has been any failure in the operation and management of the several corporations to keep their internal affairs and management separate and distinct. It is contended and it is undisputed that the advertising and soliciting for business by the Hilton enterprises is done by offering the several respective services of the affiliated hotel corporations, reservation services, and credit card facilities, in common advertising.

The pivotal, but disputed, assertion upon which the present decision depends is that the Hilton Credit corporation in handling reservations for the British corporation "does all the business which Hilton (U. K.) could do were it here by its own officials".

In this connection the majority would distinguish *Miller* v. *Surf Properties* (4 N. Y. 2d 475, *supra*) on the ground that here there is a local acceptance of reservations for the out-of-State hotel accommodations. In the *Miller* case a reservation service was also involved and during off-season periods it "accepted" reservations, subject to final confirmation, for its principal. At all times it received reservations, and during slack periods its receipt was the equivalent of acceptance by the hotel. Nevertheless this Court held that no more than solicitation of business was involved and therefore the Florida principal was not sub-

ject to judicial jurisdiction in this State. The fact that the reservations "accepted" by the agency in *Miller* could be disavowed by the principal, although they were, at least during slack seasons, for all practical purposes "final", should not be a critical distinction. As a matter of commercial practice there are many independent agencies servicing the hotel, theater, and athletic event businesses which receive "blocks" of accommodations for sale and acceptance without the need for verifying availability with their principals, or thereby subjecting their principals to judicial jurisdiction through them.

But more important, there is no support in the record for the assertion that the Hilton Reservation Service "both accepts and confirms room reservations at the London Hilton". As established by the brochure of the Reservation Service and the affidavit of the Vice-President of Hilton International, the Reservation Service only "confirm[s] availabilities" at various hotels (not merely Hilton hotels) "based on forecasts supplied by the hotels". As a matter of fact, the affidavits supplied by plaintiff do not contradict this assertion but only equivocate that the reservations "are taken and culminated right here in New York City", whatever the word "culminated" may mean in this context. The local activities of the Reservation Service, then, are similar to those of the agency in the *Miller* case. There, the "Resort Service" would be "notified by [a] hotel as to the availability of space". Unless the hotel had informed the Service to the contrary, it would, in turn, inform inquiring customers that "reservations are available" (4 N. Y. 2d at 479, *supra*).

That in the *Miller* case a wholly separate enterprise was involved is not the distinction, unless, of course, the separateness of parent and subsidiary corporations is to be wholly ignored, a position which the majority purportedly disavows, but yet takes by "inference".

As recognized, the solicitation or mere promotion of business for an out-of-State enterprise does not constitute the doing of business in the State (*Miller* v. *Surf Properties*, 4 N. Y. 2d 475, *supra*, *Elish* v. *St. Louis Southwestern Ry.*, 305 N. Y. 267, 269, *supra*; *Yeckes-Eichenbaum, Inc.*, v. *McCarthy*, 290 N. Y. 437, *supra*; see *International Shoe Co.* v. *Washington*, 326 U. S. 310, 314, *supra*). This is traditional law and there is no avowed intention to change it. On the other hand, the maintenance of localized activities in the State has, of course, been the basis for asserting personal jurisdiction (see, e.g., *Elish* v. *St. Louis Southwestern Ry.*, 305 N. Y. 267, *supra*; *Sterling Novelty Corp.* v. *Frank & Hirsch Distr. Co.*, 299 N. Y. 208, *supra*). The majority bridges the gap between these two rules by finding that separate but affiliated corporations perform the localized services, albeit local services of the narrowest scope, on behalf of the foreign corporation and, therefore, the foreign corporation is performing the localized services here, thus subjecting it to personal jurisdiction. This, of course, is a *non sequitur*, unless there is no power or privilege on the part of business enterprises to limit and segregate their assets, liabilities, and suability, if done, in fact, and if done without fraud or deception, by the utilization of separate adequately financed corporations, either subsidiary or affiliated.

The law has been that business enterprises do have that power and privilege (see *Compania Mexicana* v. *Campania Metropolitana*, 250 N. Y. 203, holding that a foreign subsidiary is not present in New York even when it is under the complete control and domination of a foreign parent, present here, which conducts the New York business, 250 N. Y. at 210). In recent years, on the basis of quite narrow distinctions, there have been some small extensions. Thus, in *Taca Int. Airlines* v. *Rolls-Royce of Eng.* (15 N. Y. 2d 97, *supra*) the rule was denied application on an arguable

but admissible finding that the foreign principal corporation had not kept its activities and management of the local subsidiary corporation distinct. As a consequence the local corporation was held to be a direct arm of the foreign corporation and the latter was deemed suable here (see, also, *Rabinowitz* v. *Kaiser-Frazer Corp.*, 302 N. Y. 892). A clearer and parallel situation was involved in *Public Adm. of New York* v. *Royal Bank of Canada* (19 N. Y. 2d 127, *supra*). There the local foreign corporation, over which jurisdiction was in dispute, was no more than a holder of certain bank accounts for the parent foreign corporation (which indisputably was doing business in New York) which indistinguishably handled all of the banking activities in which both corporations were engaged. The *Royal Bank* case, then, is a clear example of the situation where there has been insufficient formal separation of the activities of the parent and subsidiary corporations. On the other hand, cases like *Bryant* v. *Finnish Nat. Airline* (15 N. Y. 2d 426, *supra*) are beside the point, because there, on very close and arguable facts, it was concluded that the foreign corporation itself engaged directly in localized activities, sufficient to constitute doing business in this State (cf. *Berner* v. *United Airlines, Inc.*, 3 N. Y. 2d 1003, affg. 3 A. D. 2d 9).

While it is said that the separateness of affiliated corporate entities is not being disregarded, "valid inference" is drawn from the fact of "common ownership" (really less than that) to find a breadth of localized activity not otherwise established by the record facts. Hence, the intercorporate relations are made a determining factor in this very case and generalized disavowals fail to obscure the reasoning process involved.

On this analysis, the present case extends the "doing business" rule well beyond the existing principles or precedents. And the effect on the flexibility and promotion of

world-wide business enterprises would be drastic and unhealthy. Those who have sought to liberalize and broaden the bases for jurisdiction have not considered any such drastic extension, although the occasion would be an obvious one (Uniform Interstate and International Procedure Act, §§ 1.02-1.03 [9B U.L.A.], and Commrs.' note to § 1.02; see, Ehrenzweig, Conflict of Laws [1962], pp. 114-118, esp. 115. For an interesting wide range of jurisdictional bases, not including the basis suggested in this case, see Castel, Private International Law [1960], pp. 243-250).

Nor in private international law can there be found in this or other countries a jurisdictional reach as extensive as this.

It is well established in this country that a foreign parent corporation will not be subjected to the judicial jurisdiction of a State merely because of its ownership of a subsidiary corporation doing business within the State, of the parent diligently maintains the formal separateness of the subsidiary entity (e.g., *Cannon Mfg. Co.* v. *Cudahy*, 267 U. S. 333, 337 [Brandeis, J.]; *Bolger* v. *Dial-A-Style Leasing Corp.*, 409 P. 2d 517 [Colo.]; *Botwinick* v. *Credit Exchange, Inc.*, 419 Pa. 65, 73; *Harris* v. *Deere & Co.*, 223 F. 2d 161, 162 [4th Cir.]; *Steinway* v. *Majestic Amusement Co.*, 179 F. 2d 681, 683 [10th Cir.], cert. den. 339 U. S. 947; see *Massey-Harris-Ferguson, Ltd.* v. *Boyd*, 242 F. 2d 800, 803 [6th Cir.], cert. den. 355 U. S. 806; Restatement, Second, Conflict of Laws, § 52, incl. Comment b and Reporter's Note [Proposed Official Draft, Part I, May 2, 1967*]; Annot., Ownership by Foreign Corporation of

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* "*b. Subsidiary of corporation.* Judicial jurisdiction over a subsidiary corporation does not of itself give a state judicial jurisdiction over the parent corporation. This is true even though the parent owns all of the subsidiary's stock. *Cannon Mfg. Co.* v. *Cudahy Packing Co.*, 267 U. S. 333 (1925). So a state does not have judicial

Other Corporation as Basis for Jurisdiction, 18 A. L. R. 2d 187, 189, 193-202. See, also, Latty, Subsidiaries and Affiliated Corporations [1936], pp. 60-64, recognizing the universality of the rule, but qualifying the rationale for it.) In the *Bolger* case (*supra*), the facts of which are particularly interesting, the Supreme Court of Colorado recently refused to extend jurisdiction over a New York parent cor-

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jurisdiction over a parent corporation merely because a subsidiary of the parent does business within its territory.

"If the subsidiary corporation does an act, or causes effects, in the state at the direction of the parent corporation, the state has judicial jurisdiction over the parent to the same extent that it would have had such jurisdiction if the parent had itself done the act or caused the effects.

"Judicial jurisdiction over a subsidiary corporation will likewise give the state judicial jurisdiction over the parent corporation if the parent so controls and dominates the subsidiary as in effect to disregard the latter's independent corporate existence.

"Judicial jurisdiction over a parent corporation does not of itself give the state judicial jurisdiction over a subsidiary corporation. If the parent does an act, or causes effects, in the state at the direction of the subsidiary, the state has judicial jurisdiction over the subsidiary to the same extent that it would have had such jurisdiction if the subsidiary had itself done the act or caused the effects. Likewise judicial jurisdiction over the parent corporation will give the state judicial jurisdiction over the subsidiary corporation if the parent so controls and dominates the subsidiary as in effect to disregard the latter's independent corporate existence.

"Even in the absence of a stock relationship between a local and a foreign corporation, jurisdiction over the foreign corporation has sometimes been exercised on the basis of activities that the local corporation has conducted in the state as the agent of the foreign corporation. The existence of an agency relationship may be found when the foreign corporation consigns goods to the local corporation and exercises control over the latter with respect to price, merchandising or advertising." (Comment b.)

The Reporter's Note, which is extended, after referring to the *Taca* and *Rabinowitz* cases (*supra*), comments: "In effect, the New York courts do not seem to distinguish between the situation where the foreign corporation maintains a branch in the State and where it maintains a subsidiary." This, of course, would seem to go beyond the Court's intentions.

poration but held that its wholly-owned subsidiary, the "franchising and servicing" company for the parent, had sufficient contacts in Colorado to be amenable to process there.

Similarly, courts in the United Kingdom evidently will not assert jurisdiction over a foreign corporation merely because it maintains a subsidiary in Britain (see *The world Harmony* [*Konstantinidis* v. *World Tankers Corp.*], [1965] 2 All E. R. 139, 147-149). Liberal Canadian jurisdictional statutes likewise do not recognize such a basis of jurisdiction (Ontario Rules of Practice, rule 25[1]; Quebec Code of Civil Procedure, art. 94). The same is probably true in Australia (see Cowen, American-Australian Private International Law [1957], p. 38).

In Civil Law and other code countries the recognized bases of personal jurisdiction over foreign corporations admits of the assertion of such jurisdiction only on the existence of a specially designated office, situs of headquarters, or what is described as "domicile" in a special sense (see Seidl-Hohenveldern, American-Austrian Private International Law [1963], p. 99; Garland, American-Brazilian Private International Law [1959], pp. 85-86; Philip, American-Danish Private International Law [1957], p. 20; Delaume, American-French Private International Law [2d ed. 1961], pp. 142-143; Kollewijn, American-Dutch Private International Law [1955], pp. 59-60; Lombard, American-Venezuelan Private International Law [1965], pp. 71-72). In some countries it has been held that a foreign corporation is not subject to personal jurisdiction even if it maintains branches in the country, through which it actually does business (see Cappelletti & Perillo, Civil Procedure in Italy [1965], pp. 92-93; cf. Etcheberry O.,

American-Chilean Private International Law [1960], pp. 29-30 [jurisdiction to tax]).

These are striking limitations in the code countries. They suggest very strongly that the extension of personal jurisdiction projected in this case would hardly be tolerated. The influence in the code countries of domiciliary jurisdiction (in the Anglo-American sense) is much too great, and the equivalent "presence" doctrine much more restrictive than here. There is not the slightest suggestion in these materials that a formally separate foreign corporation could be brought before a foreign forum because of some intercorporate relationship, however intimate, with a local corporation.

These limitations elsewhere, and in the past, bespeak caution for the future, and especially when one considers the salutary purposes served by permitting enterprises to limit and segregate their activities as they are extended into other and frequently less developed parts of the world. Of great significance, of course, is what was also mentioned earlier, that harmful extensions of doctrine in this area will easily lend themselves to reciprocal manipulation against American enterprises operating through subsidiaries or affiliates in other countries.

While the circumstances in this case are not as serious in their effect in permitting personal jurisdiction, because plaintiff is indeed a New York resident, and the Hilton enterprises looked at in the large as a layman would view them are so much "present", the rules applied will not stay so limited. Under such grossly extended rules nonresidents would also be able to sue in New York, where tort verdicts are regarded as very high; and there are other categories in which jurisdiction might be invoked under circumstances much less appealing than here. Again, it is

pointed out that this case does not involve a cause of action which arose here, but one that arose in another country across the seas.

Accordingly, I dissent and vote to reverse and grant the motion to dismiss the complaint against Hilton Hotels (U. K.) Limited.

* * * * *

Order affirmed, with costs. Question certified answered in the affirmative. Opinion by Fuld, Ch. J. All concur except Breitel, J., who dissents and votes to reverse in an opinion in which Van Voorhis and Keating, JJ., concur.

Order and Remittitur of Court of Appeals, dated May 18, 1967, as Amended

No. 529

Form 8

FILED
1967 Jun 2 AM 11:45
Kings County Clerk's Office

COURT OF APPEALS

State of New York, ss.:

PLEAS in the Court of Appeals, held at Court of Appeals Hall, in the City of Albany, on the 18th day of May in the year of our Lord one thousand nine hundred and sixty-seven, before the Judges of said Court.

WITNESS,

The Hon. STANLEY H. FULD,
Chief Judge, Presiding.
RAYMOND J. CANNON,
Clerk.

REMITTITUR May 18, 1967

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2. No. 529 66

JACK FRUMMER,

Respondent,

VS

HILTON HOTELS INTERNATIONAL, INC., & ORS.,

Appellants.

BE IT REMEMBERED, That on the 15th day of November in the year of our Lord one thousand nine hundred and sixty-six, Hilton Hotels International, Inc., & ors., the ap-

Order and Remittitur of Court of Appeals, dated May 18, 1967, as Amended

pellants in this cause, came here unto the Court of Appeals, by Max J. Gwertzman, their attorney —, and filed in the said Court a return thereto from the order of the Appellate Division of the Supreme Court in and for the Second Judicial Department. And Jack Frummer, the respondent— in said cause, afterwards appeared in said Court of Appeals by Irving A. Scheinberg, his attorney.

Which said return thereto, filed as aforesaid, are hereunto annexed.

WHEREUPON, The said Court of Appeals having heard this cause argued by Mr. Milton B. Pfeffer, of counsel for the appellants, and by Mr. Irving A. Scheinberg, of counsel for the respondent —, and after due deliberation had thereon, did order and adjudge that the order of the Appellate Division of the Supreme Court herein be and the same hereby is affirmed, with costs. Question certified answered in the affirmative. And thereafter a motion to amend the remittitur having been granted this remittitur is hereby amended by adding thereto the following: Upon the appeal herein there was presented and necessarily passed upon a question under the Constitution of the United States, viz.: Defendant British corporation contended that it was deprived of due process in violation of its rights under the Fourteenth Amendment to the Constitution of the United States. The Court of Appeals held that there was no violation of the defendant's constitutional rights.

And it was also further ordered, that the record aforesaid, and the proceedings in this Court, be remitted to the Appellate Division of the Supreme Court, Second Judicial Department, there to be proceeded upon according to law.

Order and Remittitur of Court of Appeals, dated May 18, 1967, as Amended

THEREFORE, it is considered that the said order be affirmed, with costs. Question certified answered in the affirmative, as aforesaid.

And hereupon, as well the return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the Appellate Division of the Supreme Court, Second Judicial Department, before the Justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said Appellate Division, before the Justices thereof, &c.

RAYMOND J. CANNON,
Clerk of the Court of Appeals
of the State of New York.

Court of Appeals, Clerk's Office,
Albany, May 18, 1967.

I HEREBY CERTIFY, that the preceding record contains a correct transcript of the proceedings in said cause in the Court of Appeals, with the papers originally filed therein, attached thereto.

RAYMOND J. CANNON,
Clerk.

(Seal)

Order of Court of Appeals, dated July 7, 1967 Denying Rehearing and Granting Amendment of Remittitur

STATE OF NEW YORK,

IN COURT OF APPEALS

At a Court of Appeals for the State of New York, held at Court of Appeals Hall in the City of Albany on the Seventh day of July A. D. 1967.

Present, HON. STANLEY H. FULD, *Chief Judge, presiding.*

2 Mo. No. 693

JACK FRUMMER,

Respondent,

vs.

HILTON HOTELS INTERNATIONAL, INC., HILTON HOTELS CORPORATION and HILTON HOTELS (U.K.) LIMITED,

Appellants.

A motion for reargument and/or to amend the remittitur in the above cause to this Court having heretofore been made upon the part of the appellants herein and papers having been submitted thereon and due deliberation having been thereupon had, it is

ORDERED, that the said motion, insofar as it seeks reargument, be and the same hereby is denied; and it is

ORDERED, that the said motion, insofar as it seeks amendment of the remittitur, be and the same hereby is granted,

Order of Court of Appeals, dated July 7, 1967
Denying Rehearing and Granting Amendment of Remittitur

the return of the remittitur requested and, when returned, it will be amended by adding thereto the following:

> Upon the appeal herein there was presented and necessarily passed upon a question under the Constitution of the United States, viz.: Defendant British corporation contended that it was deprived of due process in violation of its rights under the Fourteenth Amendment to the Constitution of the United States. The Court of Appeals held that there was no violation of the defendant's constitutional rights.

AND the Supreme Court of Kings County hereby is requested to direct its Clerk to return said remittitur to this Court for amendment accordingly.

A copy

GEARON KIMBALL,
Deputy Clerk.

Opinion of Supreme Court, Appellate Division, Second Department

By Brennan, Acting P.J.; Hill, Rabin, Hopkins and Benjamin, JJ.

FRUMMER, res. v. HILTON HOTELS INTERNAT., INC., ap.—Motion by appellants for leave to appeal to the Court of Appeals granted. In our opinion, questions of law have arisen which ought to be reviewed by the Court of Appeals. The following question is certified: "Was the order of this court properly made?" Appellants' time to answer the complaint is extended until thirty days after service of a copy of the order of the Court of Appeals determining the appeal, with notice of entry.

Order of Supreme Court, Appellate Division, Second Department, dated March 28, 1966, Affirming Order Below

At a Term of the Appellate Division of the Supreme Court of the State of New York held in and for the Second Judicial Department at the Borough of Brooklyn, on the 28th day of March, 1966.

Present—HON. ARTHUR D. BRENNAN,
Acting Presiding Justice.
" L. BARRON HILL,
" SAMUEL RABIN,
" JAMES D. HOPKINS,
" A. DAVID BENJAMIN,
Justices.

JACK FRUMMER,
Respondent,

v.

HILTON HOTELS INTERNATIONAL, INC., HILTON HOTELS CORPORATION and HILTON HOTELS (U.K.) LIMITED,
Appellants.

The above named Hilton Hotels International, Inc., Hilton Hotels Corporation and Hilton Hotels (U.K.) Limited, defendants in this action having appealed to the Appellate Division of the Supreme Court from so much of an order of the Supreme Court entered in the office of the Clerk of the County of Kings on July 26, 1965, as denied the motion of defendant Hilton Hotels (U.K.) Limited to dismiss the complaint pursuant to CPLR 3211 (subd. (a) par. 8) on the ground that the court does not have jurisdiction of the person of said defendant herein, and the

Order of Supreme Court, Appellate Division, Second Department, dated March 28, 1966, Affirming Order Below

said appeal having been submitted by Mr. Max J. Gwertzman of Counsel for the appellants and argued by Mr. Irving A. Scheinberg of Counsel for the respondent, and due deliberation having been had thereon; and upon the decision slip of the court herein, heretofore filed: and made a part hereof:

It is Ordered that the order insofar as appealed from be and the same hereby is unanimously affirmed, with $10 costs and disbursements. Defendant Hilton Hotels (U.K.) Limited is given leave to serve its answer within thirty days after service of a copy of this order.

Enter:

HERMAN M. POGUL,
Acting Clerk.

Order of Supreme Court, Appellate Division, Second Department, dated May 2, 1966, Granting Leave to Appeal

At a Term of the Appellate Division of the Supreme Court of the State of New York held in and for the Second Judicial Department at the Borough of Brooklyn, on the 2d day of May, 1966.

Present—Hon. Arthur D. Brennan,
Acting Presiding Justice.
" L. Barron Hill,
" Samuel Rabin,
" James D. Hopkins,
" A. David Benjamin,
Justices.

Jack Frummer,
Respondent,
v.
Hilton Hotels International, Inc., et al.,
Appellants.

The above named Hilton Hotels International, Inc., Hilton Hotels Corporation and Hilton Hotels (U.K.) Limited, appellants in this action having made a motion for leave to appeal to the Court of Appeals from the order of this court dated and entered March 28, 1966; and the motion having been duly submitted;

Now on reading and filing the papers in support of and in opposition to said motion; and all the papers upon which the appeal was heard; and due deliberation having been had thereon:

Order of Supreme Court, Appellate Division, Second Department, dated May 2, 1966, Granting Leave to Appeal

It is Ordered that the said motion is hereby granted, and this court certifies that questions of law have arisen which in its opinion ought to be reviewed by the Court of Appeals. The following question is hereby certified, to wit:

"Was the order of this court, dated March 28, 1966, properly made?"

and it is further

ORDERED that appellants' time to answer the complaint is hereby extended until thirty days after service of a copy of the order of the Court of Appeals determining the appeal, with notice of entry.

Enter:

HERMAN M. POGUL,
Acting Clerk.

Decision of Supreme Court of the State of New York, County of Kings, per Morrissey, J.

FRUMMER v. HILTON HOTELS INTERNATIONAL, INC.—Defendant Hilton Hotels (U.K.) Limited, moves pursuant to 3211 (a), subdivision 8, CPLR, to dismiss the complaint as to it on the ground the court has not jurisdiction of the person of the defendant. Plaintiff in this action seeks to recover for alleged personal injuries he sustained while a guest on June 12, 1963, at the defendant's hotel in London, England. The papers concededly show that the summons and complaint was served on the moving defendant's secretary in London, England, on May 20, 1965. Movant bases this motion on the contention that it is a foreign corporation, chartered under the laws of Great Britain; that it is domiciled in London, England; has no office for the transaction of business in the United States and that it is not doing business in this country, therefore it is not subject to the jurisdiction of the courts of this state (Moving aff., p. 2). In opposition plaintiff contends that the moving defendant is so closely tied in and interlocked with the other named defendants that it may factually and reasonably be presumed that an agency exists between them so that under the "long-arm" statute (sec. 302(a)(1) CPLR) the court should deny the motion and exercise personal jurisdiction herein. Further, in support of its posture, plaintiff submits photostat exhibits which sufficiently indicate to the court that movant has enough contacts within our state to allow our state to subject it to a judgment in personam. The court is of the opinion following examination of the submitted papers and exhibits annexed, that movant has failed to establish that it is completely separated and independent from the other named defendants. On the proof presented, as inter alia exemplified by the exhibits, it is clear that this defendant at least had that minimum contact in New York for acquisition of jurisdiction over it in personam (Greenberg v. R. S. P. Realty Corp'n, 22 App.

Decision of Supreme Court of the State of New York, County of Kings, per Morrissey, J.

Div. 2d 690; Tava International Airlines, S. A. v. Rolls-Royce of England, Ltd., 15 N. Y. 2d 97, 256 N. Y. S. 2d 129). The court finds the affidavit submitted in support of this motion, other than perfunctorily denying plaintiff's allegations, is peculiarly silent as to the specific allegations of fact contained in plaintiff's affidavits as to this defendant's contacts in this city, albeit perhaps minimal with its co-defendants herein. The motion is accordingly denied with leave to movant to serve its answer within thirty days after service of a copy of the order to be entered hereon with notice of entry. Settle order on notice.

Order of Supreme Court of the State of New York, County of Kings, dated July 26, 1965

At a Special Term, Part I of the Supreme Court, held in and for the County of Kings, at the Courthouse thereof, Civic Center and Montague Street, in the Borough of Brooklyn, City and State of New York, on the 26th day of July, 1965.

Present: HON. THOMAS E. MORRISSEY, JR.,
Justice.

Index No. 15739/64

JACK FRUMMER,

Plaintiff,

—against—

HILTON HOTELS INTERNATIONAL, INC., HILTON HOTELS CORPORATION and HILTON HOTELS (U.K.) LIMITED,

Defendants.

The defendant, Hilton Hotels (U.K.) Limited, having moved this Court for an order dismissing the plaintiff's complaint in the above entitled action as against said defendant, pursuant to Section 3211(a), subdivision 8, of CPLR, and for such other and further relief as may be just and proper under the circumstances, by notice of motion dated the 16th day of June, 1965, and the said motion having duly and regularly come on to be heard before this Court on the 28th day of June, 1965,

NOW, ON READING AND FILING the said notice of motion dated the 16th day of June, 1965, the affidavit of Max J.

Order of Supreme Court of the State of New York, County of Kings, dated July 26, 1965

Gwertzman, sworn to the 16th day of June, 1965, and a photostatic copy of the supplemental summons dated August 19, 1963, and a photostatic copy of a supplemental complaint verified the 16th day of March, 1965 by Jack Frummer, without any exhibits attached to said photostatic copy of said complaint, and the reply affidavit of Sidney H. Willner, verified the 30th day of June, 1965, all offered in support of said motion, and the affidavit in opposition to said motion by Irving A. Scheinberg, duly sworn to the 25th day of June, 1965, and photostatic copy marked Exhibit A of a brochure entitled "Hilton Hotels and Inns, Domestic Travel as well as Hilton Hotels International Around the World for Individuals and groups, 1963" and Exhibit B consisting of photostatic copies of statement of account and bill to the plaintiff, Jack Frummer, while a guest at the London Hilton Hotel, invoices marked 06522, and invoice marked 07462 from June 9, 1963 (incorrectly listed as July 9, 1963) to June 15, 1963, Exhibit C, consisting of photostatic copy of Standard & Poor's Corp. report dated Thursday, April 8, 1965 of Hilton International Co., formerly Hilton Hotels International, Inc., page 1141, frontal and reverse sides thereof, marked Exhibits C-1 and C-2, and photostatic copy of Standard & Poor's Corp. report dated Monday, March 8, 1965, of Hilton Hotels Corporation, page 1140, frontal and reverse sides thereof, marked Exhibits D-1 and D-2, and rebuttal affidavit of Irving A. Scheinberg, sworn to the 2nd day of July, 1965, all offered in opposition to said motion, and the said motion having duly and regularly come on to be heard before this Court on the 28th day of June, 1965, and the same having been submitted in lieu of oral argument, and due deliberation having been had thereon and upon the written decision of the Court filed hereon, it is

Order of Supreme Court of the State of New York, County of Kings, dated July 26, 1965

Now, on motion of Irving A. Scheinberg, attorney for plaintiff,

ORDERED, that the defendant Hilton Hotels (U.K.) Limited's application for an order dismissing the plaintiff's complaint in the above entitled action pursuant to Section 3211(a), subdivision 8 of the CPLR, is in all respects denied, and it is further

ORDERED, that the defendant, Hilton Hotels (U.K.) Limited is hereby given leave to serve its answer within thirty days after service of a copy of the within order with notice of entry thereof upon its attorney.

Enter

T. E. M., Jr.,
J. S .C.

Granted
July 26, 1965

ROBERT J. CREW:
Clerk

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

479

HILTON HOTELS (U.K.) LIMITED,

Petitioner,

—against—

JACK FRUMMER,

Respondent.

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

IRVING A. SCHEINBERG
Attorney for Respondent
Office & P. O. Address
66 Court Street
Brooklyn, N. Y. 11201

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Opinion Below

The opinion of the New York State Court of Appeals is officially reported in (19 N.Y. 2d 533; 281 N.Y.S. 2d 41; —— N.E. 2d ——). The opinion and the order and the remittitur as was amended by the Court of Appeals appear to be printed in the Appendix at pages 1a to 19a.

The decision of the Court of Appeals of the State of New York which denied reargument and granted the application to amend the remittitur as yet have not been officially reported but they appear in the Appendix at pages 2a to 21a.

So too, the opinion of the Appellate Division of the Supreme Court, Second Judicial Department affirming the

decision of the Supreme Court of the State of New York, County of Kings, at Special Term, have both been included in the Appendix (pages 22a to 28a), and the decision of the Appellate Division of the Supreme Court has been unofficially reported in 269 N.Y.S. 2d 688.

Jurisdiction

Jurisdiction of this Court is predicated upon 28 U.S.C. Section 1277, and the order of the Court of Appeals denying reargument but directing an amendment of the remittitur which appears in the Appendix (at pages 20a-21a).

Question Presented

DOES THE DECISION AND THE RESULTANT ORDER OF THE NEW YORK STATE COURT OF APPEALS JURIDICALLY FINDING THAT JURISDICTION EXISTS *IN PERSONAM* OF THE PETITIONER, A BRITISH CORPORATE ENTITY, OPERATING THE LONDON HILTON HOTEL IN LONDON (A WHOLLY OWNED SUBSIDIARY IN THE VAST HILTON HOTEL CHAIN AND ENTERPRISES THROUGHOUT THE WORLD), WHERE THE RESPONDENT, AS A RESULT OF HIS STAY AS A GUEST IN ITS HOTEL IN LONDON, WAS SERIOUSLY INJURED WHILE MAKING USE OF ITS FACILITIES DUE TO THE CLAIMED NEGLIGENCE OF THE PETITIONER IN THE OWNERSHIP, OPERATION AND MAINTENANCE OF SAID HOTEL, PREDICATED UPON ITS "TRANSACTION OF BUSINESS" IN THE TRADITIONAL SENSE IN THE STATE OF NEW YORK, BECAUSE OF THE ACTIVITIES ON ITS BEHALF BY HILTON SERVICE

CORPORATION, KNOWN AS THE HILTON RESERVATION SERVICE, TOGETHER WITH THAT OF THE HILTON CREDIT CORP. THAT HANDLES CARTE BLANCHE CREDIT CARDS (BOTH WHOLLY OWNED AND CONTROLLED SUBSIDIARIES OF HILTON HOTELS INC. AND HILTON INTERNATIONAL), THAT GENERATE AND GARNER ITS HOTEL BUSINESS IN THE STATE OF NEW YORK AND WHO ARE THE PROVERBIAL MAGNETS, WORKING "HAND-IN-GLOVE" TOGETHER, CONTRAVENE THE DUE PROCESS CLAUSE OF THE FEDERAL CONSTITUTION?

Statement

The respondent, an attorney at law actively engaged in the practice of law in Kings County for over forty years, attended a convention in London at the petitioner's hotel with reservations that were made for him here for his stay thereat and by various people who flew over to attend a particular convention and were present thereof. The plaintiff originally checked into defendant's hotel and was assigned to Room 2423 thereof and thereafter it was changed to Room 1922 when the subject accident complained of occurred. The respondent had checked in at the hotel on June 9th, 1963 and it was at the 12th while making use of the overhead shower and bathtub (a circular or ovular type modernistic bathtub, this being a new hotel that had just been recently constructed and opened—which was improperly and dangerously constructed from the point of view of safety and design, and devoid of accepted standardized safety guards for use by patrons) he was caused to slip and fall, sustained serious injuries requiring

received preliminary medical attention in London which he received through the intervention of the hotel establishment itself, that paid for the same, and when his injuries were ascertained to be as serious as they were, he was immediately ordered flown home and had to be admitted to a hospital in New York City. He stayed there for a considerable period of time, received constant care and treatment and medication both at the hospital and through his physicians, from which personal injuries he still continues to suffer.

For the purpose of brevity, the parent hotel, HILTON HOTEL INC., and HILTON HOTELS INTERNATIONAL, now known as HILTON INTERNATIONAL, both Delaware corporations and both duly qualified to do business in the State of New York, and was transacting business in the State, were personally served with process in the above action. Both appeared by the same attorney who interposed answers to the complaint denying material allegations of plaintiff's complaint concerning ownership, operation and control of the subject hotel where the accident occurred, to wit, in London, at the London Hilton Hotel.

This required a marked consideration and analysis of the corporate structure of the Hilton Hotel Chain and it was found that the petitioner was a long term (99 years) lessee of the London Hilton Hotel, a wholly owned subsidiary of Hilton Hotels International in turn wholly owned by Hilton Hotels Inc., the parent or "daddy" corporation and because of the method of operation of the petitioner in conjunction with the Hilton Reservation Service, known as Hilton Service Corp., and the Hilton Credit Corp., known as Carte Blanche, as well as the evidence assembled in connection with the operational activities of the parent

and subsidiary Hilton Hotel Corporations (Hilton Hotels Inc., and Hilton Hotels International, now Hilton International) in conjunction with these two wholly owned affiliates, i.e., the reservation and credit service, it was then decided to bring in the petitioner and acquire personal jurisdiction over it in accordance with the provisions of the Civil Practice Law and Rules of the State of New York (Section 313 CPLR), since it was found and concluded that there was sufficient "minimum contacts" within the State of New York to warrant holding said corporation personally in this jurisdiction.

After the petitioner went to the time and trouble of amending his complaint, over the continuous array of objections by the petitioner through counsel, personal service upon the secretary of said British corporate entity in London, England, was effected and thereafter the defendants (all of them) moved to dismiss the plaintiff's complaint allegedly in accordance with the Civil Practice Law and Rules of the State of New York (CPLR Section 3211a, subdivision 8) on the ground and theory that the Courts of the State of New York did not acquire jurisdiction over the petitioner since it was claimed that it was not here *in personam* so as to warrant and justify bringing it in through this media.

The primary court (Special Term, Supreme Court Kings County), denied the petitioner's application, an appeal to the Appellate Division of the Supreme Court, 2nd Judicial Department by petitioner resulted in an affirmance of the order made at Special Term; leave to appeal to the Court of Appeals was granted by said intermediate Appellate Court, the Court of Appeals after hearing argument and a submission of briefs affirmed the order of the lower court; denied the application by petitioner for reargument and for a rehearing, but did grant its application for and.

amendment of the remittitur so as to provide therein that the petitioners made a claim of a deprivation of its rights and of a violation of due process by the Court of last resort of the State of New York in arriving at said determination contrary to the 14th amendment of the Constitution of the United States, but instead had found that there had been no violation thereof. The petitioner has now moved this Court for a writ of certiorari asking it now for leave to review the entire matter.

Argument

THE PETITIONER, A FOREIGN DOMICILIARY, WAS "TRANSACTING BUSINESS" IN A TRADITIONAL SENSE WITHIN THE CONFINES OF THE STATE OF NEW YORK THROUGH ITS AGENT, HILTON SERVICE CORP., COMMONLY KNOWN AS HILTON RESERVATION SERVICE AND HILTON CREDIT CORP., ALSO KNOWN AS CARTE BLANCHE CREDIT CARDS, BOTH OF WHICH ARE WHOLLY OWNED SUBSIDIARIES OF HILTON HOTELS CORP. AND HILTON HOTELS INTERNATIONAL, NOW KNOWN AS HILTON INTERNATIONAL, THROUGH A SYSTEMATIC METHOD OF GENERATING AND GARNERING THE FLOW OF HOTEL BUSINESS THROUGH SAID AGENCIES IN QUESTION.

At the outset, the attention of this learned Court is called to the fact that in the application for this writ, the petitioner has, at various instances, made mention of the Hilton Reservation Service as being a subsidiary of the parent corporation of the Hilton vast empire chain but additionally has sought to create the impression that it operates or acts for some fifty non-affiliated hotels and

that its activities on behalf of all hotels is merely perfunctory and for the sole purpose of ferreting out the availability of hotel space and that is subsidized by the Hilton chain as well as the other so-called fifty non-affiliated hotels (pages 5, 6). There does not appear to be any basis for this particular impression sought to be created, but contrarily, the record well supports the fact maintained by the respondent and confirmed by the Supreme Court in New York, the intermediate Appellate Court, and the Court of Appeals, that the Hilton Reservation Service is the arm of the Hilton chain and is the garnering and projecting agent for the obtainance of hotel business in the State for the petitioner herein as well as other of the vast chain of establishments.

The alleged claim of the petitioner appears to be categorized threefold-wise.

First, that the Court of Appeals did not properly apply nor understand the doctrine that has been postulated by this learned Court in

International Shoe Company v. *Washington*, 326 U.S. 310 (1945);
McGee International Life Insurance Co., 355 U.S. 220 (1957);
Hanson v. *Denckla*, 357 U.S. 255 (1957).

It has been sought by the petitioner to argue that the doctrine of a foreign entity "transacting business" in the traditional sense, through "minimum contacts" in a state or area of non-origin by the thesis of the holdings referred to, were never intended to apply to the corporate structure and method of operation of the Hilton Hotel chain and more particular the petitioner herein, as a wholly owned subsidiary thereof.

Secondly, a further argument has been attempted to be projected that were the holding of the New York Court of Appeals to be applied to others similarly situated that an undue burden or hardship would be visited upon the petitioner or others in the area of constitutional offensiveness tantamount to a deprivation of its rights under the Federal Constitution.

Thirdly, the factual finding by the Court of Appeals of the State of New York that the Hilton Service Corp., commonly referred to as the Hilton Reservation Service, was the agent of the petitioner, is violative of the concept of the "wall of separability" dividing responsibility of parent for subsidiary or affiliate, or vice versa, and on that account, it is likewise constitutionally offensive to the rights of petitioner.

Taking each of the arguments separately, we state in answer to the petitioner's contention that the thesis of this Court's prior holdings enunciating the principle of responsibility of a foreign corporate entity to the forum of the aggrieved in the area that it engages in the regular "transaction of business" through the medium of "minimum contacts", in a state or area of non-origin, that this doctrinaire was formulated by this learned Court because of the verities of reality concerning that which was transpiring through the invading corporate activator elsewhere than its state of origin and it was concluded that in doing what it (the foreign entity) did and in engaging in transactions directly or indirectly through itself or through those acting on its behalf, jurisdiction over it *in personam* was obtained and overruled contentions generally raised by it claiming non-presence thereat which rendered it immune from suit and jurisdiction contrary to the standards of justice and fair play.

The overall test, of what constitutes "doing or transacting business" is a question of its activity that distinguishes

a mere shadow from the true object itself to denote its presence and though not laid down with any formula of strict exactitude, under such circumstances process served upon it is valid, binding, and effective against one, or be it a corporation or otherwise so engaging in that activity because of the regularity of transactions, or relationships known as "minimum contacts", so that it could not thereafter be heard to complain that it was not present in the forum that thereafter set in motion its machinery of judicial determination and resultant judgments. We believe that the compact thesis of the holdings of this Court has synthesized these all-inclusive concepts.

The petitioner has gone so far as to urge, as a basis for a grant of a writ to this Court, that the principles enunciated in the holdings referred to have been perverted and unduly enlarged by the Court of Appeals of New York in affirming the order finding its presence *in personam* in this State and by overruling its contentions.

The petitioner has extracted, out of context, language in

Hanson v. *Denckla, supra* (page 7);
International Shoe Company v. *Washington,* (page 9);
McGee v. *International Life Insurance Co., supra* (page 10);

to thereby pervert the meaning and the true impact of the holdings in question. Contrarily, they have been truly implemented realistically by the New York Court of Appeals, by virtue of the record herein, and if anything, the same gives living effect to the constitutional concepts crystalized therein.

As a matter of fact, this learned Court's holdings so pronounced by the authorities and adverted to, by infer-

ence or otherwise, were never intended to set a policy or a guideline precluding a finding of presence of a foreign domiciliary that acted through the medium of a duly constituted agent as the record and the irrefutable exhibits (pp. 65, 67, 8) here reveal, and as was justifiably found by the majority of the Court below.

The very dissenting opinion by Breitel, J., speaking for the minority view (a very broad judicial exercise and dissertation of generalized international corporate law) strongly diluted the position taken by that view when the Court observed (though somewhat strangely not adverted to and overlooked by the petitioner in this application) as it tacitly acknowledged and conceded as follows (15a):

> "While the circumstances in this case *are not as serious in their effect in permitting personal jurisdiction, because plaintiff is indeed a New York resident, and the Hilton enterprise is looked at in the large as a layman would view them, are so much 'present'*, the rules applied will not stay so limited." (Italics the writer's.)

Thus, previous holdings by this Court concerning the doctrine and application thereof of what constitutes "doing business" in the traditional sense, have not been traduced or violated so as to be constitutionally offensive, but instead put into living force and effect.

Further, as to the claim by the petitioner concerning hardship made by it the answer to that old proverbial "chestnut" has been stated time in and time out again and by this very Court tersely through Mr. Justice Black in *McGee* v. *International Life Insurance Co.* (355 U.S. 220, 223-1957) at 223, when speaking to the Court, about this very same argument said:

> "At the same time modern transportation and communication are measured much less burdensome for a party sued to defend himself in a state where he engages in economic activity."

And respondent wishes to add what Chief Judge Fuld, speaking for the New York Court of Appeals said, in answer to this plaint by petitioner thus as follows (5a):

> "We are not unmindful that litigation in a foreign jurisdiction is a burdensome inconvenience for any company. However, it is part of the price which may properly be demanded of those who extensively engage in international trade. When their activities are broad, either directly or through an agent, it becomes as widespread and energetic as the activities in New York conducted by the Hilton U.K., they received considerable benefits from such foreign business and may not be heard to complain about the burdens."

We have also urged in the courts below in answer to this complaint by the petitioner that those who engage in these financial transactions should be held to accept civil responsibility incidental thereto and submit themselves to that jurisdiction rather to permit them to play "hide and seek" after they have enjoyed the financial fruits of general transactions that have been engaged in in the state of the forum that has been invoked to adjudicate the controversies of the parties. It does no particular harm to any defendant, especially the petitioner herein, but contrarily, within constitutional safeguards, requires him to live up to that responsibility as any other litigant similarly situated is so required to do. Between the balance of convenience and weight of burden of a foreign domiciliary defending a law suit in the forum that it has invaded and reaped the benefit of economic activity therein as against a resident who

would be obliged to travel to a forum thousands of miles away to enforce such rights against a "corporate colossus," the answer becomes quite self-evident. The financial strain and stress can be borne with greater ease and little burden upon the invader rather than the one who has been invaded.

As to the third contention by petitioner that the finding by the Court of last resort in New York that Hilton Service Corp.-Hilton Reservation Service was not in fact the agent of the petitioner, which findings affirmed the findings of the Court of original jurisdiction (Morrisy, J.—page 27a) and the Appellate Division of the Supreme Court, (page 23a-24a) the petitioner has asked this learned Court to grant a writ of review by way of certiorari in order to overturn and review questions of fact. The exhibits (pgs. 65, 67, 68) support the factual conclusions and have not been explained away by the petitioner. The agents scope of power is at least measured by the principal's grant of authority,

Nat. Rental v. *Szakhent,* 375 U.S. 311, 316 (1964),

and the exhibits and the record overwhelmingly support the New York Court's finding on agency.

Angel v. *Burlington,* 530 U.S. 183, 191-2, (1947);
Erie R. R. Co. v. *Tompkins,* 304 U.S. 64 (1938);
Central Contracting Co. v. *Maryland Cas. Co.,* (CA 3d 367 F. (2d) 341, 344, 1966);
Natl. Equipment Rental Ltd. v. *Reagen,* (CA 2d 338 F. (2d) 759, 762, 1964).

As we have always understood the firm policy of this Court, translated as it has been into various appropriate holdings in regard thereto, the nature of this type of application necessitates a total absence of an analysis and review of disputed questions of fact for consideration by this Court as a prerequisite to the grant of a writ, but rather it is matters that are of a unique or of far-reaching impor-

tance or of diversity of view between the Circuit Courts in the various states or those between the State Courts and the Circuit Courts, or any such other serious circumstances that under those situations a writ of certiorari is entertained and granted. The obvious purpose of requiring one to apply for a writ, as we understand it is through this very method this tribunal can avoid being beleaguered with matters beyond the pale and scope of that form of jurisdictional impropriety (reviewing questions of fact) so as to permit it, in turn, to determine matters of grave concern and of unique importance in these chaotic periods of our government domestically or those upon the world scene. This Court is not a court for the correction of findings of a factual nature, unless, for an obvious and exceptional nature, but it is one whose jurisdiction is concerned with the review of questions of law solely.

We believe that the late Mr. Justice McReynolds said very appropriately in regard to this subject matter over forty years ago what is decisive here:

> [*Southern Power Company* v. *North Columbia Public Service*, 263 U.S. 508, 509 (1924)]:
>
> "The argument developed that the controverted question was whether the evidence sufficed to establish actual dedication of petitioner's property to public use, primarily a question of fact. That is not the ground upon which we granted the petition, and if sufficiently developed would not have moved us thereto."
>
> See *McAllister* v. *U. S.*, 348 U.S. 19, 23-25, (1964) per Mr. Justice Frankfurter and the authorities cited therein at page 25.
>
> *Houston Oil Company* v. *Goodrich*, 245 U.S. 440, 441 (1917);

Graver Manufacturing Co. v. *Lende Co.*, 336 U.S. 271, 275 (1949);

Furness & Co. v. *Yang-Tsze Insurance Co.*, 242 U.S. 430, 434 (1917).

CONCLUSION

Since the petition fails to reflect (Rule 38, subdivision 5)

a) that the New York State Court of Appeals determination is in conflict with that of this learned Court on the matter of federal law or that

b) a conflict exists between the decisions of the Court of Appeal of New York with several other State Courts, or between it and a Federal Court of Appeals on a federal question and

c) and further, since the fundamental basis for the assignment of error by the petitioner, upon a crystalized appraisal thereof, is one primarily of its disagreement with the factual conclusion reached by the Courts in New York, determining as they did that the Hilton Service Corp.—otherwise known as Hilton Reservation Service, a wholly owned affiliate of Hilton Hotels Corp., and Hilton International Inc., now known as Hilton International, was its agent for generating a flow of business on a continuous basis for the petitioner herein in New York State, and this learned tribunal does not seek, by certiorari or otherwise, to review disputed questions of fact therefor

the basis for the issuance of a writ of certiorari has not been presented herein, and it should, therefore, be not granted.

For the foregoing reasons and considerations heretofore demonstrated, petition for Writ of Certiorari should in all respects be denied in addition to an allowance to the respondent of costs and of his printing expenses (Rule 32).

Respectfully submitted,

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